IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1655 OF 2002

Life Insurance Corporation of India. ...Petitioner.

Versus

Ravindra Vyankat Ladhe & Ors. ...Respondents.

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Ms.S. M. Paranjape i/b. Little & Co. for the Petitioner.

Mr. Ramesh Ramamurty for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 13, 2005.

ORAL JUDGMENT:

This Petition arises out of an award of the Central Government Industrial Tribunal dated 28th February 2002 upon references to adjudication under Section 10 of the Industrial Disputes

Act, 1947. The Tribunal has held that the action of the Life Insurance Corporation in terminating the services of the First and Second Respondents who were appointed on a temporary basis between December 1992 and August 1994 is contrary to the provisions of the Industrial Disputes Act, 1947 and that consequently, the two workmen are entitled to reinstatement with full back wages. The First and Second Respondents were engaged between December 1992 and August 1994 on daily wages on an ad-hoc basis. In December 1992, a regular process of selection was conducted and it is common ground, that the two workmen participated in the selection process, but were not selected. According to the Petitioner, the engagements of the First and Second Respondents declined significantly after February 1994 to an average of less than 5 to 6 days in a month upon regularly selected candidates being appointed in accordance with the statutory rules and regulations of the Corporation on a permanent basis. The services of the two workmen were discontinued in August 1994. Two references were made to adjudication on 27th May 1997 on the question as to whether the action of the Petitioner in

terminating or discontinuing the services of the workmen was legal and justified.

2. Statements of claim were filed on behalf of the workmen and the claim therein was for appointment as Peons on a permanent basis in the category of sub-staff of the Corporation. Evidence was adduced before the Tribunal. By its award dated 28th February 2002, the Tribunal came to the conclusion that the workmen had worked for a period in excess of 240 days in a calendar year; that the termination of their services constituted a retrenchment under Section 2(oo) of the Industrial Disputes Act, 1947 and that the termination must be regarded as invalid on the ground that the workmen were not paid retrenchment compensation under Section 25F. The Industrial Tribunal has, therefore, granted reinstatement with full back wages.

3. The submission which has been urged before the Court on behalf of the Petitioner is that the two workmen were appointed purely on a temporary basis. In proceedings which went up to the Supreme

Court, a scheme for regularization came to be approved in respect of workmen who had been engaged in 1985 until 23rd October 1992 and in terms of a statement which had been made by the Corporation before the Supreme Court, statutory instructions were issued for regularising the services of workmen in Class III and Class IV categories. On behalf of the Petitioner it has been submitted that after the amendment of the Life Insurance Corporation Act, 1956, by which Clause (cc) was inserted in sub-section (2) of Section 48 and as a result of the introduction of sub-sections (2A), (2B) and (2C), the regulations which were framed in 1960 assumed the character of statutory rules and thus, have overriding force and effect notwithstanding anything contained in the Industrial Disputes Act, 1947. These provisions were interpreted by a Bench of three Learned Judges in **M.Venugopal Vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam,** (1994) 2 SCC 323. Hence, it was urged that the dispensation of the service of the First and Second Respondents who were engaged purely on a temporary basis cannot attract the provisions of the Industrial Disputes Act, 1947 and that in

any event both the workmen had participated in the regular process of selection and had failed to be duly selected. In these circumstances, it was submitted that the Tribunal was in error in allowing the references.

4. On the other hand, it has been urged on behalf of the First and Second Respondents that there is no power conferred in the statutory regulations to effect termination and that the power to terminate or dispense with the services even of a temporary workman must be exercised in a manner which is in consonance with Section 25F of the Industrial Disputes Act, 1947. Hence, it is submitted that the Tribunal was justified in arriving at the conclusion that the termination was invalid and that the workmen were entitled to reinstatement with back wages.

5. In considering these submissions, it would at the outset be necessary to advert to the background in which the provisions of the Life Insurance Corporation Act, 1956 came to be amended by

Amending Act 1 of 1981. In 1982, an industrial dispute was raised by one of the Unions operating in the establishment of Life Insurance Corporation alleging that the Corporation had engaged in unfair labour practices by recruiting temporary, badli and part time employees. A reference was made on 20th May 1985 to a National Industrial Tribunal presided over by Justice R.D. Tulpule. An interim award was passed by the Tribunal on 5th January 1986 restraining the Petitioner from recruiting staff on a regular basis as a result of which a large number of persons came to be recruited on a temporary basis. The Tribunal delivered its award on 18th April 1986 and issued directions to the Petitioner in relation to absorption, restricting them to those temporary and part time badli workmen who were employed between January 1982 and May 1985 with qualifying days of service. The Tribunal directed that the workmen be considered for absorption on the basis of suitability and desirability in accordance with the eligibility criteria prescribed under the award. A Petition filed by the Corporation in this Court was disposed of on 14th August 1986. This Court, while declining to interfere with the award, clarified that the

award did not exclude the enforcement of normal qualifications such as educational requirements and physical fitness. Subsequently, the Central Government referred the dispute in regard to the interpretation of the award of Justice Tulpule to the National Industrial Tribunal presided over by Mr.Justice M.S. Jamdar. The Tribunal made its award on 26th August 1988 which was challenged by the Petitioner in the Supreme Court. A compromise was entered into in March 1989 between LIC and all Unions except one and the Special Leave Petition before the Supreme Court was disposed of on 7th February 1996.

6. LIC terminated the services of persons engaged all over India on a temporary basis who were no longer required in the light of recruitment under the terms of the compromise. Several petitions came to be filed inter alia in the High Courts at Allahabad and Madras which, it has been stated before the Court, were dismissed. When Special Leave Petitions were filed before the Supreme Court, a scheme was submitted before the Supreme Court. In **E.Prabhavathy**

vs. The Life Insurance Corporation (Civil Appeals arising out of S. L. P. (c) Nos.10393-19413 of 1992), the Scheme was approved by the Supreme Court, on 23rd October 1992 as being reasonable. The scheme was made a part of the judgment of the Supreme Court and accordingly the Civil Appeals came to be disposed of. The Supreme Court held that the provisions of the Scheme to the effect that an employee should have worked between 20th May 1985 till date for a period of 85 days in any two consecutive calendar years was a reasonable stipulation for considering eligibility for regularization. The Supreme Court held that the scheme was in consonance with the law enunciated by the Court in **State of Haryana vs. Piara Singh,** JT 1992 (s) SC 179. A statement was made before the Supreme Court that for future ad-hoc appointments/regularisation, LIC was in the process of making a Scheme consistent with the guidelines laid down in **Piara Singh**'s case. Under the scheme which was approved by the Supreme Court, all temporary employees who worked for 85 days in any two calender years with LIC between 20th May 1985 and 23rd October 1992 and who conformed to the required eligibility criteria for

regular recruitment on the dates of their initial temporary appointment would be permitted to compete for the next regular employment to be undertaken by the Corporation. Such candidates were to be considered on merits with all other candidates including those from the open market subject to the condition that they would be given a relaxation of age in applying for regular recruitment. As for the future, LIC stated before the Supreme Court that a new scheme would be framed. After the decision of the Supreme Court, the Chairman of LIC issued and promulgated a scheme to regulate the employment of temporary staff known as Life Insurance Corporation of India (Employment of Temporary Staff) Instructions, 1993. The instructions inter alia provided for appointment of temporary employees in Class III and Class IV categories from out of panels which would be formed by the Corporation.

7. Now in so far as the present case is concerned, it would be necessary to advert first and foremost to the Life Insurance Staff Regulations of 1960. These regulations were initially framed by the

Corporation with the previous approval of the Central Government in exercise of powers conferred by Section 49(2) of the Life Insurance Corporation Act, 1956. Regulation 8 in relation to temporary staff provides thus:

> "Temporary Staff :
>
> -8.(1) Notwithstanding anything contained in these Regulations, a Divisional Manager may employ staff in Classes III and IV on a temporary basis subject to such general or special directions as may be issued by the Chairman from time to time.
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> -(2) No person appointed under sub-regulation (1) shall only by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post."

Regulation 4 provides that the Chairman may, from time to time, issue such instructions or directions as may be necessary to give effect to,

and carry out, the provisions of the regulations and in order to secure effective control over the staff employed in the Corporation. In so far as the members of the temporary staff are concerned, sub-regulation (2) of Regulation 8 specifically provided that no person appointed under sub-regulation (1) shall be entitled to claim absorption or preference for recruitment only by reason of such appointment.

8. Parliament amended the provisions of the Life Insurance Corporation Act, 1956 by Amending Act 1 of 1981. As a result of the amendment, clause (cc) was inserted in sub-section (2) of Section 48 which confers power upon the Central Government to make rules to carry out the provisions of the Act. By and as a result of clause (cc) as inserted, the Central Government is empowered to provide for the terms and conditions of service of the employees of the Corporation. The rule-making power in Section 48(2)(cc) extends to the following:

> "(cc) the terms and conditions of service of the employees and agents of the Corporation, including those who became employees and agents of the Corporation on the appointed

day under this Act."

Sub-section (2A) was also introduced in Section 48 by the Amending Act and it provides as follows:

> "(2A) The regulations and other provisions as in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act, 1981, with respect to the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the Corporation on the appointed day under this Act, shall be deemed to be rules made under clause (cc) of sub-section (2) and shall, subject to the other provisions of this section, have effect accordingly." (emphasis supplied).

As a result of sub-section (2A), the Staff Regulations that were framed in 1960 are deemed to be Rules made under clause (cc) of sub-section (2) of Section 48.

9. Sub-section (2B) of Section 48, as amended, provides that the rule making power that is conferred by clause (cc) of sub-section (2) shall include the power to give retrospective effect to the rules; to amend the regulations and other provisions referred to in sub-section (2A) with retrospective effect from a date not prior to 20th June 1999. Sub-section (2C) of Section 48 has a significant bearing in the present case and provides thus:

> "(2C) The provisions of clause (cc) of sub-section (2) and sub-section (2B) and any rules made under the said clause (cc) shall have effect, and any such rule made with retrospective effect from any date shall also be deemed to have had effect from that date, notwithstanding any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or any other law or any agreement, settlement, award or any instrument for the time being in force." (emphasis supplied).

The effect of sub-section (2C) is to impart overriding effect to the provisions of clause (cc) of sub-section (2) as well as to any rules which have been made under clause (cc) notwithstanding any judgment, decree or any order of any Court or Tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law or any other agreement, settlement or other instrument for the time being in force.

10. Regulation 8 of the Staff Regulations of 1960 which empowers the authority nominated therein to recruit Class III and Class IV personnel on a temporary basis is, therefore, a rule within the meaning of Section 48(2)(cc). That is specifically provided for in sub section 2A. A person appointed on a temporary basis under sub-regulation (1) of Regulation 8 is not entitled to absorption in the services of the Corporation or to claim preference for recruitment to any post. In exercise of the power conferred by Regulation 4, statutory instructions were issued by the Chairman of the Corporation

on 28th June 1993 defining the method and manner of recruitment of temporary staff. These rules have overriding effect over the provisions of the the Industrial Disputes Act, 1947. Sub-section 2C of Section 48 specifically provides so.

11. The amended provisions of the Life Insurance Corporation Act, 1956 came up for consideration before a Bench of three Learned Judges of the Supreme Court in **M. Venugopal vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam**, (1994) 2 SCC 323. The Supreme Court held that as a result of the statutory fiction that is created by the provisions of sub-section (2A), regulations relating to the terms and conditions of service of employees and agents of the Corporation framed under Section 49(2)(bb) shall be deemed now to be Rules under Section 48(2)(cc) and all "such rules shall have overriding effect over the provisions contained in the Industrial Disputes Act, 1947 so far as the terms and conditions of employment of such employees who also conform to the requirement of the definition of "workman" under the Industrial

Disputes Act, 1947 are concerned" (para 10 at page 329). Construing these provisions, the Supreme Court held that the termination of the services of a person appointed as probationer under Regulation 14 shall be deemed to be in pursuance of the rules framed under Section 48(2)(cc) and would have overriding effect over Section 2(oo) and Section 25F of the Industrial Disputes Act, 1947. The Court held thus:

> "The amendments introduced in Section 48 of the Corporation Act have clearly excluded the provisions of the the Industrial Disputes Act so far as they are in conflict with the rules framed under Section 48(2)(cc). The result whereof will be that termination of the service of the appellant shall not be deemed to be a "retrenchment" within the meaning of section 2(oo) even if sub-section (bb) had not been introduced in the said section. Once Section 2 (oo) is not attracted, there is no question of application of Section 25-F on the basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period

> of probation is in terms of the order of appointment read with Regulation 14 of the Regulations, which shall be deemed to be now Rules under Section 48(2)(cc) of the Corporation Act."

The Supreme Court noted that the constitutional validity of the Amending Act of 1981 was upheld in **A. V. Nachane vs. Union of India** , (1982) 1 SCC 205. The Court held that the wisdom of the legislature in either extending the protection of the provisions of the Industrial Disputes Act, 1947, or denying the same cannot be assessed by the Court unless it is held to be violative of any of the provisions of the Constitution:

> "Earlier such employees used to be governed by the regulations framed by the Corporation under Section 49 of the Corporation Act as well as by the provisions of the Industrial Disputes Act, being "workman" within the meaning of that Act. It was up to them to enforce the rights or remedies in terms of the regulation so framed under the

Corporation Act or in accordance with the provisions of the the Industrial Disputes Act. But after the amendment introduced by the Parliament in Section 48, the employees of the Corporation shall not be entitled to protections to which they were entitled before the coming into force of the amendment aforesaid. The amendments cannot be held to be violative of Article 14 of the Constitution merely on the ground that a section of the employees of the Corporation had the benefit or protection of the provisions of the the Industrial Disputes Act, which now they have been deprived of. The wisdom of the legislature in extending the protection of the provisions of the Industrial Disputes Act or denying the same cannot be judged by the courts unless any such step is held to be violative of any of the provisions of the Constitution."

12. The decision of the Supreme Court concludes the present case. The Tribunal was in error in coming to the conclusion that the

order of retrenchment must fail for failure to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947. The First and Second Respondents were temporary workmen. Under the terms of their engagement, their services could be dispensed with and the power to dispense with a member of the temporary staff is implicit in Regulation 8 of the Staff Regulations of 1960. Upon the enforcement of the Amending Act of 1981, the regulation acquired the character of a rule framed under Section 48(2)(cc). The rule overrides the provisions of the Industrial Disputes Act, 1947 by virtue of the provisions of Section 48(2C).

13. Counsel appearing on behalf of the First and Second Respondents urged that Section 48(2)(cc) must be construed to exclude its application to a temporary workman. There is no reason why the provision should be so restricted. Clause (cc) of sub-section (2) of Section 48 confers a rule making power in relation to the terms and conditions of the employees and agents of the Corporation and there is no reason to restrict the ambit of the rule making power only

to permanent workmen. Then it was urged that Regulation 8 only stipulates that there is no right to absorption to members of the temporary staff and that it does not specifically contemplate a power of termination. The submission cannot be accepted. The power to terminate the services of a temporary employee is implicit in the very nature of the engagement under Regulation 8. Temporary engagement is necessarily temporary and can, therefore, be brought to an end by the employer in accordance with the governing provisions of contract and subject to any legal stipulation regulating his right. There is no merit in the submission urged on behalf of the First and Second Respondents that Sub-section (2C) of Section 48 deals only with the question of retrospectivity. Ex-facie a bare reading of the provision will demonstrate that the submission is not correct. Sub-section (2C) specifically lays down that the provisions of clause (cc) of sub-section (2) of Section 48 as well as any rules made under clause (cc) shall have effect inter alia notwithstanding anything contained in the Industrial Disputes Act, 1947. In any case, the interpretation of the provision is no longer res integra but is covered

by the decision of the Supreme Court in **Venugopal's** case. The Industrial Tribunal has proceeded on the basis that the workmen had completed 240 days of service and that they were entitled to the protection given under Section 25F. The protection of Section 25F is plainly unavailable once the provisions of the the Industrial Disputes Act, 1947 are overridden. The attention of the Court is drawn to the fact that in the Written Statements which were filed before the Tribunal, submissions were in fact, urged, based on the amended provisions of Section 48 and the decision of the Supreme Court in **Nachane (**supra). These submissions have evidently not been considered. Be that as it may, since a pure question of law has been raised both in the written arguments which are filed in this petition and in the oral submissions at the Bar, Counsel have been heard with reference to the submissions. The First and Second Respondents have filed their reply to the petition.

14. For all these reasons, I am of the view that the award of the Industrial Tribunal is patently unsustainable and has to be interfered

with in the exercise of the supervisory jurisdiction of this Court. The award suffers from a clear error apparent on the face of the record. The award is in the teeth of the statutory provisions contained in the Life Insurance Corporation Act, 1956. The Respondent workmen participated in the process of selection and were not selected. The Writ Petition is accordingly allowed and the award of the Industrial Tribunal dated 28th February 2002 is quashed and set aside. The references made to adjudication to the Industrial Tribunal (CGIT-1/43) & 44 of 1997) shall accordingly stand dismissed. In the circumstances, there shall be no order as to costs.

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